



TOY V. AGWAY, et als.

CHRONOLOGYDate(s)Exhibits

5/8/44 / 9/19/41

TT born - MT born

1960

MT graduates H.S.

1962

TT graduates H.S.

1964

MT graduates college - A.C.U. bs/ed.

June 1962 - May 1963

TT works with Father as peddler

What is drum peddler?

*works whole life in drum business except USAF
where seemed to work with massive heavy but delicate
machinery*

May 1963 - May 1971
(8 yrs.)

TT service - crew chief - attains mech. skills & training as
crew chief by 1970. TT, at age 25, is youngest "Flight
line chief in U.S.A.F.

June 1964

MT&TT meet while TT in training

June 1964 - May 14, 1975

TT & MT - married - June 5, 1965 - sons born:

Tom - Nov. 13, 1967

Shannon - June 19, 1970

Adam - Dec. 3, 1975

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Exhibits

May 1971 - March 1974

TT works with brother as peddler
MT, school teacher/mother

March 1974

TT & HT split operations - both peddle separately

March 1979

TT incorporates Superior B&D Co.
Sole incorporator, Sh., Director & Officer
begins to look for location to rent or buy.
Sees need to update recon., plants for
efficiency & to meet D.O.T., D.E.P. & E.P.A. regs.
Economic opportunity. Peddler - selling Reconstituted
customers primarily chemical - oil & paint derivatives

1980

P-1

Deed, Ramus - Toy

TT & MT acquire Elk Twp/Glo Co. Industrial Land use
as depot & save to const. bldg. & build recon. plant
Sees need to produce own drums. Regs. become more
stringent.
Other plants not keeping up - quality control out of TT's
hands.

Established producers cannot meet Environmental
Regs -

Significant # of Recons out of business &
bankrupt by environmental fines & judgments

1982@

TT & MT acquire another non-contiguous Elk Twp
industrial lot (4+A) NJ Ave.
Hold as investment. Both lots in individual names to
hedge vs. health, incap. or bus. failure.

Review S B & D business plan to take
advantage of Established producers going
out of business

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Date(s)
1980 - 1984

Exhibits

Zoning approval for building acquired from Elk Twp. Pl.Bd.
Preparatory to bldg.

~~Early 1985~~

C-block bldg. plans drawn but financing too steep.
TT begins to look for bldg. Banks require too much collateral - want them to pledge virtually everything they own.

Checks Morton - O.K. but

Has good reports from friends about Agway

T. C. bldgs.

1985

Telmark, Agway's leasing Arm can finance without mtg. on everything TT&MT & Superior own.

TT contacts Agway first time.

Had forgotten but Agway first met in ~~early 1986~~ *late 1985*

P-2

Initial Specs / check
12/85 P-3

TT & MT meet Ag Rep/Agent, Losch - Losch reps can build a building on Elk Twp. land meeting all reqs of TT & MT for use for recon. plant:

Reqs. = (a) 50' x 72' x 16'4" (4" added for OH doors)(16' for trailer closure)

(b) windows, basic lighting & electric

(c) 3 OH doors, 2 man drs.

(d) full concrete floor & wood & shingle roof

(e) shingle roof (most Agway PB's Galv. Alum.) *doesn't use Galv.*

Losch - promises Agway will, in return for payment of price leveling of ground and obtaining of Bldg. Permit:

Promises

(a) supply proper arch, drawings/plans to accomplish reqs. above.

(b) supply all mats & labor

(c) provide complete Turnkey bldg. in accordance with plans.

Initial drawings made to prepare plans - TT doesn't have - reminded of the 1st meeting by Agway discovery.

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CHRONOLGOY

| <u>Date(s)</u> | <u>Exhibits</u> | |
|----------------|--------------------------------|--|
| Oct/Nov 1986 | P-4 Telmark app 10/16/86 | Telmark will finance by Lease-Purchase with no collateral other than bldg. if TT&MT qualify financially. Above repeated, discussion renewed. TT - Telmark app made. |

| | | |
|---------------|--|--|
| Nov. 19, 1986 | | { TT&MT have main plans - apply to E Twp. BI for Permit #86-98 Not given <u>Truss drawings</u> or F-1, F-2. } |
|---------------|--|--|

| | | |
|---------------|---|--|
| Nov. 24, 1986 | Lease & A Lease P-5 / P-6 Agway Lease 964 725 amended to 964 804 + 15% or less. buy out | 2nd or 3rd meeting with Losch & Rep of Telmark (a) price quoted - \$725 x 96 months amended to \$804 per month for 96 months-Why amended? - change in conc. work due to water table. (b) Lease signed by TT & MT. (c) 1st payments made \$804 (\$79 when amended) (d) <u>promises a, b, c repeated (See above)</u> (e) promises plans will be provided or had been prior? (f) amended lease also signed \$804 per month for 96 months = \$77,184 Telmak has approved. (g) Stratton promises - at end of lease Toys could purchase for 15% or less of the total. (h) total price (\$90, 750.00) paid to Telmark even after collapse |
|---------------|---|--|

| | | |
|---------------|--|------------------------|
| Dec. 22, 1986 | P-57 main Elu Agway mails (1) sample C & W Cert and (2) TT already has main plans <u>but never</u> P-8 (C-4) F-1 P-10 F-2 F-1 & F-2 <u>Truss plans</u> P-20 Truss drawing (Berko) (3) Lease - signed by Agway P-91 letter 2 Sample C & W cert. | got 5-15-86 from Berko |
|---------------|--|------------------------|

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Date(s)

Exhitits

Nov. 1986 - Jan. 1987

TT obtains b-permit & levels ground.

Mar./Apr. 1987

Gifford arrives & starts construction

Mar./Apr. 1987 to *Sept,*
1987

Building behind schedule, Gifford working other jobs, claims short of equipment.

TT allows Gifford in, TT's name to lease air comp because Gifford claims his is broken. This is slowing progress.

Gifford holds 5 weeks-still doesn't work much-working

at least one other job. TT negs rental bill + left out insulation for xtra charge for xtra concrete at final settlement.

Mid-late Oct. 1987

Gifford packs up & leaves - TT thinks bldg looks complete insofar as he can determine by plans he has

— Oct. 30, 1987

P 12

Signed C & W cert

*P - 13 assignment of lease
to Teelink by Agway*

Losch appears - Represents to MT & TT

(1) He has "inspected bldg."

(2) "Building is complete in accordance with plan" *all Agway's
delegations
performed.*

(3) TT & MT should sign C & W Cert.

(4) Losch signs C & W Cert.

(5) TT & MT sign C & W Cert.

(6) No further contact with Agway-except perhaps
call to Losch or Losch's office re: Truss drawings
@ or around Aug. 1989.

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Date(s)

Exhibits

— Oct. 30, 1987 - 1991

TT moves in - uses bldg to house trucks and do peddling work etc. and begins to purchase, rebuild, and install machinery in plant

-detail - work & time frame - profitability

always improving

TT in roof Trusses to install wiring - No Xbraces present, remembers because of wiring for machinery, but not having F-1 & F-2, thinks not required.

P-21-27

70-46 inc 7, 82

profitability - really increased after acquired full ability to recondition our drums. Steady increase in profitability from 1974 - Feb 1979

Aug. 8, 1989

Based on wrong T drawings

TD's in bldg dated 1/23/86

TD's in BI office dated 8/6/89 -

C.O. dated 8/8/89 - TT remembers BI saying needs

TD's - thought when BP issued but now realizes must have been when C.O. going to be issued or perhaps both.

June 1988

700 wk

to taking salary even in form of loan - due by reason of expense re developing plant

No salary after - not after collapse until
Plant in operation - able to produce 50 drums daily - but still being modified.

most autotoms are chemical oil & paint cans needing reconditioned/remanufactured drums for flammable hazardous - directed to pass drop test

— June 1991

Plant has gradually been adjusted & upgraded, now able to sustain 350 drums per day every working day (1750/per 5 day, 2100 per 6 day week, if necessary)

Superior's plant being constantly upgraded for quality, additional recycling ops & for speed & efficiency. In 1993, TT taking \$700/wk but still preparing major upgrade with head/lid manufacturing in mind to be 1st in mkt. before 10/94 when new regs. come in. Plowing what could be profit or salary back into business for obtaining (1) head production (2) additional reconditioning production.

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CHRONOLOGY

Date(s)

Exhibits

Nov. 1993

Head press acquired for head manu. op also pad & moving exps.

(1) final addition to plant will be complete manufacture of heads for drums re-conditioned & sale & others. Then continue to upgrade capacity & speed.

(2) Needs

(a) additional space for presses for heads & eventual wash bay facility for other than steel containers.

(b) installation of 1st press - has already poured concrete & placed 1st press

(c) manufacture of dies - investigating

(d) TT & MT begin to scout for best price on adjct. bldg. for press and more space - estimates obtained.

estimate.

(e) might be able to squeeze add'l. daily drum Prod. to 400 = 2000/2400/wk. over while working on head production.

(f) plans to have head manufacturing in place by June '94 - 2 guages & 2 kinds -(closed & flanged) before Oct. 1994 (date of new D.E.P. drop test reg.) and be first supplier in local market. -

- Dec. 1993

Concerted effort to acquire solid regular customers to have steady market for full production which TT is now certain he can maintain & even increase.

Projected date for producing new heads will make him only local head producer in time to meet D.E.P. drop test specs. (Oct. 1994). - will corner mkt. for Northeast.

~~Production of heads now going getting \$ instead of \$ as projected, but can't sell as many as projected.~~

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CHRONOLOGY

| <u>Date(s)</u> | <u>Exhibits</u> | |
|----------------|-----------------|---|
| Feb. 11, 1994 | | Friday - Plant had been running at full capacity all week. By @ 3 P.M. - Remainder of weeks production stacked on shipping room floor - ready to be loaded & shipped on Mon. Feb. 14. All employees leave. 3 P.M. |
| Feb. 11, 1994 | | Weather - Rain, freezing rain, sleet & snow + windy - Bad but nothing near previous winter storms since 1987. Total accum precip. 4 1/2 - 6 in. - mostly sleet & snow, some freezing rain on top. TT sees no difference in snow accumulation between site and Glassboro, Pitman or any other place he travels over weekend. |
| Feb. 13, 1994 | 55 | Sun - ST to go to bldg. & hook up Diesel Truck motor heaters to allow easy starting Mon. 14 Feb. (Feed line?) Simple connection of electrical cords to 110V outlet inside bldg. Weather - Sunny - still gusty winds - snow over since early Sat. Feb. 12, 1994. ST sees no difference in snow accum between site & Glassboro - Later measures road miles to Rowan weather station at 2.8 mi from bldg. |
| Feb. 14, 1994 | 57 P2 | PB & ST arrive @ 8:30 A.M. - TT shortly thereafter Bldg entirely collapsed - Most Timber columns - left side as you face end of bldg. with 2 OH doors broken at base - that wall buckled out 3-5 ft. - Roof, except for ends completely collapsed - All inventory, product & machinery under fallen roof - snow melting on everything. - Building obviously total loss. - Recond barrels total loss. |

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| <u>Date(s)</u> | <u>Exhibits</u> | |
|------------------------|-----------------------|---|
| Feb. 14, 1994 (con't.) | | - Inventory of heads, rings etc. - total loss (can't use if wet & rusted or bent - most bent, all wet & will surely rust before safe to remove. - Machinery - almost total loss - some bent, all wet - all will either have to be replaced or re-built. - TT spends remainder of day. PB sees no difference in snow accum over weekend between site & home in M. Hill - passes Rowan to and from work - no difference. |
| Feb. 14 - 15, 1994 | PB Videos P-33 | PB & TT & ST + workers examine, salvage & video damage. P. Britton videos Feb. 15. Plant workers laid off. |
| Feb. 15, 1994 | | { Ins. Co. claims collapsed from ice & snow, probably won't pay & LWP contacted. } |
| Feb. 15 | | Tues. - Calls: - Lawyer - Engineer - Agway { Ins. carrier contacted } - Efforts started to supply customers with drums purchased from other reconditioners. Reduced work force returns to peddling to maintain customers. TT peddling, replacing customers who switch. Trying to figure way of acquiring means to re-build plant or re-building plant, from snow to present. |

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Date(s) Exhibits
Feb. 15 (con't.)

PB
P-11 Photos
P-12 Video
P-13 (a) Failed bracing
(b) Wind Truss and
C. I found truss
P-14 (a) Crushed gusset
L Nail
14a & 2 nail
a = 3-7
L = PB.

J. Hare arrives - inspects with TT-PB at same time taking video of damage.

- Pictures (still) taken by J Hare & TT

Hare finds (1) Many absences of needed bracing (2) Many shoddy or improperly installed elements relating to structural integrity and windward sway bracing & railing.

Needs bracing details (F-1, F-2) which are obtained by fax from a contractor TT knows, who sometimes erects bldgs. for Agway. Later Agway sends identical F-1, F-2 in answer to interros.

TT calls Agway - asks for help in demolition and getting replacement bldg. up quickly to save as much equipment from further weather damage as possible - is told - "We are in the business of selling buildings, not helping people".

After Collapse

P-147

Telmark - pd in full under k

P-15 calculator Tape

\$90,954.20

Feb. 16 - PF until June 1994

Numerous engineers and accountants for Agway and insurer inspect bldg.

Feb. 18, 1994

Hare, P.E., P.A., P.P., formally hired.

Feb. 18-20@

F-1 & F-2 acquired by fax from an Agway bldg. contractor other than Gifford - Confirm observations of Hare. Later Agway supplies identical F-1 & F-2 in discovery plus truss plans.

Feb 15 to Present

Returned to exclusively peddling drums - subball re cond
Fact us it find date 1979-1987 as corp and 1974-1979
as proprietor Has no greater control of quality &
steach supply them remain large established
re conditions that the plant he built had
10 previously allowed him to avoid and
beat in competition -

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Date(s)
March 1994

Exhibits

Hare's 1st report submitted to ~~Colonia together with~~ and estimates for replacement of bldg. obtained and estimate of losses:

| <u>Date</u> | <u>Contractor</u> | <u>Amt.</u> |
|-------------|-------------------|---------------------|
| P-18 | Maurer | \$ 33,975.00 |
| 19 | Windows | 2,400.00 |
| P-19 | Elmer Door | \$ 4,850.00 |
| P-16 | Licciardello | \$ 16,800.00 |
| P-17 | Reese Const. | \$ 48,390.00 |
| | Roger | |
| P-20 | MacMichael | \$ 9,800.00 |
| | | <u>\$116,215.00</u> |

June 1, 1994

~~Insurer, Colonia - inspects and formally declines to pay proof of loss - after @ 6 months of delaying & inspections.~~

P-77

Flanagan Stoner inspection of machinery losses.

Stoner Report - value of machinery damaged
TT prepares, for ~~Stoner~~, a chart of machinery location & supplies, what he has of cost of purchasing, replacement machinery or repairing where possible & efficient value of machinery or repairs, same plus inventory = \$425,703.³⁰

~~{ Proof of loss filed with Colonia }~~

D. Geary present during this time, views damage is later supplied with chart of machinery location & Stoner Report - Reports - salvage value = \$51,850.

Total machinery lost ~~\$374,000~~ 373,853.³⁰

~~Costs {+Inventory}~~

Geary has Flanagan's materials and figures

Other dams - P-15 \$90,954.²⁰
14

116,215.00 } 490,068.³
373,853.³⁰
90,954.²⁰
\$ 581,022.50

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| <u>Date(s)</u> | <u>Exhibits</u> | |
|---------------------------|---|---|
| June 8, 1994 | | Suit started vs. all defendants. |
| Nov - Dec 1994 | | <div style="border-left: 2px solid black; border-right: 2px solid black; padding: 5px; display: inline-block;">Colonia re-inspects and agrees to admit coverage. After receiving prelim rept of Hare & re-inspecting agrees damage due to wind not snow.</div> |
| Dec. 1, 1994 | | <div style="border-left: 2px solid black; border-right: 2px solid black; padding: 5px; display: inline-block;">Colonia pays \$200,000.00 Partial contents \$ 75,000.00 " Bldgs 50,000.00 " Bus. Inc. 75,000.00 <hr/>\$200,000.00</div> |
| Sept. '94 - Mar. '95 | <div style="border-left: 2px solid black; border-right: 2px solid black; padding: 5px; display: inline-block;">P-15 Telmark P-16 masonry est P-17 Bldg. est P-18 elect est P-19 Dem est P-20 Demo est</div> | <p>Estimate for replacement of old bldg. see A-1</p> <p>New (and larger bldg. constructed) - old bldg. balance rolled over - cost of old bldg. = <u>\$90,954.20</u> per. Telmark payment records.</p> <p><i>Introduce replacement estimates - see A-1</i></p> |
| Jan. 1995 | | <p>David Bumbaugh hired to speed re-building of machinery & plant at salary of <u>\$60,000.00</u> (with benefits). (Bumbaugh terminated May 1, 1997)</p> <p><i>Experienced Dem machinery man for bldg plant, cost 60,000 / yr. TT! Paid this while peddling 1987-1993 / had to do it another 3 yrs + pay Bumbaugh for</i></p> |
| March 1, 1995 | | <div style="border-left: 2px solid black; border-right: 2px solid black; padding: 5px; display: inline-block;">Colonia pays additional \$165,460.50 Partial toward contents, bldg. & bus. inc.</div> |

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Date(s) Exhibits
April 1, 1995

Colonia refuses to pay remaining portion of business interruption limits (\$35,000) claiming 10 1/2 months reasonable time to make all repairs necessary to recover. Doesn't care to understand - took @3 years to build in first place & 2 yrs. to adjust to efficiency attained by time of collapse.

March 27, 1997

Colonia finally pays \$34,539.50 making total \$400,000 policy limits
All claims vs. Colonia now dismissed.

less - & co 120,833.33
costs 553.57
 121,386.90

Net net rec (-office)
278,612.10

Mar. '95 - Present

New equipment purchased and installed (in part).

ST & TT working 50-60 hrs weekly.

ST no overtime - TT not taking any salary from Superior from Mar. '95 to present. Only \$19,000.00 drawn by TT - in '94 nothing in 1995 Peddling by day from Feb. '94 to mid '96 - rebuilding 1st bldg. & then machinery at night with help of Bumbaugh.

Early 1996 (by June)

First test run of ability to produce a drum.

All machinery works, but is not an operable plant
work continues to actually have plant working all, at once.
Not an actual working plant until Aug. '96.

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Date(s)
Aug. 1996

Exhibits

Capacity of plant reaches 300 drums per day but cannot be sustained 5 days in row. Recovery is still incomplete:

1. Weekly 750 - 1000 as opposed to 1750 per week in old bldg.

2. Hope to reach old capacity of 1750 per week in 1997 (Sept. @).

3. Head production started 20+ mos. late. Lost being 1st in market. (Can from June '96 produce plain heads for Superior production & more than can be sold as customers have other suppliers.

Still working to produce flanged heads - will be doing so by @Sept. '97.

Then can work on getting customers away from competition by competing in a market which would have been all Superior's if producing by Oct. '94 instead of Oct. '97.

Aug. '96 - Present

Work continues to fully automate and correlate plant to work as efficiently and consistently as before - a lack of capital is hampering ability to do so any quicker than it is being done.

(a) Huge overtime without comp by TT, ST, HT over whole period. HT laid off Aug. '97.

(b) Still re-adjusting plant & adding machinery & degree of automation and ability to reach 1750/week (350 every day) that the old plant could do.

Currently able to produce many more closed heads than in-house needs, but can't sell as many as could have if entered market before new reg and won't have flanged heads until Aug./Sept. '97. Now has flanged heads.

Other head producers have more customers due to being able to supply heads when regulation required them (10/1/94). Users had to order by trailer load & store heads but acquired ability to do so from Oct. '94 to now - don't need TT as they would if they started with him in 1994.

Now producing both kinds of heads - actually selling at \$ 3.00 instead of \$ 3.00 (15% more) as conservatively estimated. 2.50 (20% more)

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Date(s)
Sept. 97

Exhibits

Projected date that plant will be in production of as many drums as produced in Feb. '94 and in full production of heads (both Kwts) as would have been produced by Oct. of '94.

? ~~Exhibit~~

~~Interview records given to Markonby~~

— Discuss positive Market conditions existing as of time of collapse

P-39

Video Tape by Phil Britton while TT & H inspect - also shows tape of news report of incident

P-40 - 46

hardware removed from bldg by TT & Hare

41-42

→ New examples of PB nail & box nail.

P-43 44-45

Enlargements of P-8 9, 10

P-46

Rowan weather chart

P-47 - 80

Enlargement of P-8 (F-1)
photos of bldg

P-9 (F-2)

P-50

P-10 (Truss drawing)

P-51

Rowan weather observations Feb 13-14, 1994
Photos taken by TT & Hare while inspecting damage.

P-81

Windward Truss end

P-82

Leeward inside girder plate